October 4, 1987

Attached are 38 pages of agreed text setting out the essential elements of a Free Trade Agreement between the United States and Canada. Each was initialed by the negotiators.

For the United States:

James A. Baker III

Clayton Yeutter

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For Canada:

Michael Wilson

Pat Carney

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OBJECTIVES

The objectives of this Agreement, as elaborated more specifically in the provisions of this Agreement, are to:

(a) eliminate barriers to trade in goods and services between the territories of the Parties;

(b) facilitate conditions of fair competition within the Free Trade Area;

(c) significantly expand liberalization of conditions for investment within the Free Trade Area;

(d) establish effective procedures for the joint administration of the Agreement and the resolution of disputes;

(e) lay the foundation for further bilateral and multilateral cooperation to expand and enhance the benefits of the Agreement.

4/10/87

U.S.-CANADA FREE TRADE AGREEMENT

Elements of the Agreement

AGRICULTURE

Canada and the United States have agreed to eliminate all agricultural tariffs within 10 years. With respect to fresh fruits and vegetables, a conditional snapback to the MFN rate of duty would be allowed for 20 years.

The United States has agreed to exempt from quantitative restrictions imports from Canada of sweetener-containing products having 10 percent or less sweetener by dry weight.

Canada has agreed to eliminate import licenses for wheat, barley, oats and products thereof, as soon as the support levels for these products in both countries are equivalent, determined on the basis of a technical calculation. For oats and barley, this would likely be upon entry into force of the Agreement.

The Parties have agreed not to impose or reimpose any quantitative restrictions on grain and grain products so long as there are no significant changes in the grain support programs in each country that would lead to a significant change in imports from the other Party.

Canada has agreed to eliminate its Western Grain Transportation Act subsidies on agricultural products shipped to the United States through Western Canadian ports. This will affect primarily Canadian exports of millfeeds and rapeseed meal to the U.S. Pacific Northwest.

Canada has agreed to increase its global import quotas for poultry, eggs and products thereof to the annual average level of actual shipments during the past 5 years.

The Parties have agreed to exempt each other from import restrictions imposed under their respective meat import laws.

The Parties have agreed not to use direct export subsidies on agricultural products shipped to each other.

Each Party has agreed to take into account the export interests of the other Party in the use of any export subsidy on agricultural goods exported to third countries, recognizing that such subsidies may have prejudicial effects on the export interests of the other Party.

10/3/87.

The Parties have agreed that their primary goal with respect to agricultural subsidies is to achieve, on a global basis, the elimination of all subsidies which distort agricultural trade and agree to work together to achieve this goal, including through multilateral trade negotiations such as the Uruguay Round.

The Parties have agreed to minimize technical barriers on agricultural, food and beverage goods. This involves both countries' regulatory authorities cooperating to reduce technical differences which interfere with trade, while still protecting human, animal and plant health.

The Parties have agreed to consult semi-annually on agricultural issues. The Parties have also agreed to consult on agricultural issues at such other times as mutually agreed.

The Parties retain their GATT rights with respect to issues not otherwise provided for in this Agreement.

10/3/87

AUTOMOTIVE TRADE

The Parties have agreed to:

- eliminate original equipment tariffs over 10 years, eliminate tariffs on tires over 10 years, and eliminate aftermarket parts tariffs over 5 years;

- phase-out the embargo on the import of used cars into Canada over 5 years;

- terminate duty waivers linked to exports to the other party upon implementation of the agreement;

- not grant other automotive duty waivers and not expand existing arrangements; and

- change duty drawback and Foreign Trade Zones consistent with the general provisions of the Agreement.

Canada has agreed to terminate production based duty waivers by 1996 or according to the schedules negotiated between the companies concerned and the Government of Canada, whichever is sooner.

Canada has agreed that no additional companies producing vehicles in Canada may qualify as eligible manufacturers under provisions similar to those in the Auto Pact. The United States undertakes not to introduce comparable programs without consultations.

The parties have agreed to apply a new rule of origin for vehicles traded under the provisions of the FTA Agreement based on 50 percent of direct cost of manufacturing.

The parties recognize the continued importance of automotive trade and production for the respective economies of the two countries and the need to ensure that the industry in both countries should prosper in the future. As the worldwide industry is evolving very rapidly, the two Governments have agreed to establish a Blue Ribbon Panel to assess the state of the North American industry and to propose public policy measures and private initiatives to improve its competitiveness in domestic and foreign markets. The Governments of the United States and Canada also agreed to cooperate in the Uruguay Round of multilateral trade negotiations to create new export opportunities for North American automotive products.

Canada and the United States each shall endeavor to administer the Auto Pact in the best interests of employment and production in both countries.

USTR
10/3/92

ARTICLE: CULTURAL INDUSTRIES

1. Cultural industries as defined in Annex A are exempt from the provisions of this agreement.

2. Notwithstanding any other provision of this agreement, a party may take measures of equivalent commercial effect in response to actions that would have been inconsistent with this Agreement but for paragraph 1.

Annex A - Cultural Industries

"cultural industry" means an enterprise engaged in any of the following activities:

a) the publication, distribution, or sale of books, magazines, periodicals, or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing;

b) the production, distribution, sale or exhibition of film or video recordings;

c) the production, distribution, sale or exhibition of audio or video music recordings;

d) the publication, distribution, sale of music in print or machine readable form; or

e) radiocommunication in which the transmissions are intended for direct reception by the general public, including all radio, television and cable television broadcasting undertakings and all satellite programming and broadcast network services.

U.S.-CANADA FREE TRADE AGREEMENT

Elements of the Agreement

CUSTOMS

The rule of origin for eligibility for tariff treatment under the Agreement for articles incorporating non-party materials will be based on specified changes in tariff classification under the Harmonized System. Articles imported under one tariff classification must be sufficiently processed in the importing country to be classified on importation into the other Party in another tariff classification. Precise rules, by tariff line, specify the necessary change. Certain imported articles are also required to incur a specified percentage of their manufacturing costs in one or both of the Parties. These rules may be amended by consent of both Parties in light of their consultations with industry.

Apparel made from third-country fabric above a specified level (with a sublevel for apparel made from third-country wool) will be subject to the MFN tariff. Apparel made from fabric formed in one of the Parties shall receive the Agreement's tariff treatment.

Duty drawback (other than on goods exported in the same condition in which they were imported) for bilateral trade will end five years after implementation of the Agreement. At that time duty drawback may be extended as mutually agreed. The Parties have agreed to an indefinite extension for citrus products and for apparel made from third-country fabric and subject to the MFN tariff.

Five years after implementation, goods produced under programs that confer benefits similar to duty drawback (e.g., Canada's inward processing program, U.S. Foreign Trade Zones) and exported to the other Party shall be treated for duty purposes, upon exportation, as if they were entered for consumption in the producing country. This means, in the case of U.S. Foreign Trade Zones, that goods made from third-country components in a zone will be subject to duty on the value of those third-country components at either the finished-good or the component tariff rate.

Except for duty waivers applying to the automotive industry (handled separately), existing duty waivers linked to performance requirements will end within ten years of implementation of the Agreement, and no new duty waivers linked to performance requirements will be entered into after June 30, 1988, or the date Congress ratifies the Agreement, whichever is later.

When a Party grants a company-specific duty waiver to a designated firm or individual, it will, if the waiver hurts the commercial interests of the other Party, either make the duty waiver generally available or end it. This provision is intended to ensure that company-specific duty waivers are not used in a manner that distorts trade and investment.

Customs user fees assessed on merchandise of the other Party will be phased out within five years of implementation.

Importers will base their claims for tariff treatment under the Agreement on a written declaration from the exporter that the good being imported meets the rule of origin of the Agreement. Upon request, exporters will be required to supply this written declaration to the Customs Administration in the country of exportation. False declarations by either the exporter or the importer will be subject to penalties imposed by their respective governments.

ENERGY

There is broad agreement to assure the freest possible bilateral trade in energy, including nondiscriminatory access for the United States to Canadian energy supplies and secure market access for Canadian energy exports to the United States.

Both sides have agreed to prohibit restrictions on imports or exports, including quantitative restrictions, taxes, minimum import or export price requirements or any other equivalent measure, subject to very limited exceptions: (1) short supply or prevention of exhaustion of a finite energy resource, but only if the exporting Party provides proportional access to the diminished supply and does not otherwise discriminate on price; or (2) national security, to supply military establishment or critical defense contracts, respond to a situation of armed conflict, prevent nuclear proliferation or respond to direct threats to supply of nuclear materials for defense purposes.

Parties will consult on energy regulatory actions which could directly result in discrimination inconsistent with the principles of the Agreement.

With respect to existing measures, Canada has agreed to: (1) limit the application of its "surplus test" for energy exports to a monitoring function, with any possible future restriction subject to the proportionality and nondiscriminatory pricing conditions above; (2) eliminate its requirement that uranium exports be upgraded to the maximum extent possible in Canada prior to export; and (3) eliminate a discriminatory price test on electricity exports. The United States has agreed to: (1) eliminate the legislative restriction on enrichment of Canadian uranium; and (2) allow exports of Alaskan oil to Canada, up to 50 thousand barrels per day on an annual average basis, subject to a condition that such oil be transported from Alaska in U.S. flag vessels

Both sides have agreed to: (1) support continuing Bonneville Power-B.C. Hydro negotiations, encouraging parties to work out their differences consistent with the objectives and principles of the Agreement; and (2) allow existing or future incentives for oil and gas exploration, development and related activities in order to maintain the reserve base for these energy resources.

EAK
10/3/87

30 Oct. 1987

Key Elements of Agreement on Financial Services

Canada Agrees:

1. Canada agrees that U.S. nationals and U.S. controlled companies will receive treatment as favorable as persons of Canada with respect to the ability to purchase shares of Canadian controlled financial institutions.

2. Canada agrees to exempt U.S. bank subsidiaries, individually and collectively, from the limitations on the total domestic assets of foreign bank subsidiaries in Canada.

3. Canada agrees not to use review powers governing the entry of U.S. controlled financial institutions in a manner inconsistent with the aims of this Agreement.

4. Each party agrees that this agreement shall not be construed as representing the mutual satisfaction of the parties concerning the treatment of their respective financial institutions; accordingly, Canada agrees, subject to the U.S.'s commitment to consult and to liberalize further the rules governing its markets and to extend the benefits of such liberalization to Canadian controlled financial institutions established under the laws of the United States, to continue to provide, subject to normal regulatory and prudential considerations, U.S. controlled financial institutions established under the laws of Canada with the rights and privileges they now have in the Canadian market as a result of existing laws, regulations, practices and stated policies of the Canadian Government.

U.S. Agrees:

1. To the extent that domestic and foreign banks are permitted to engage in the dealing in, underwriting, and purchasing of debt obligations backed by the full faith and credit of the United States, its states or political subdivisions, the United States agrees to permit domestic and foreign banks to engage in the dealing in, underwriting, and purchasing of debt obligations backed by the Canadian equivalent of the "full faith and credit" of Canada, its provinces or political subdivisions.

2. The United States agrees not to adopt or apply any measure that would accord treatment less favorable to persons of the other party than that accorded under Sections 5 and 8 of the International Banking Act of 1978.

3. The United States agrees to accord Canadian financial institutions the same treatment as that accorded U.S. financial institutions with respect to amendments to the Glass-Steagall Act and associated legislation and resulting amendments to regulations and administrative practices.

4. Each party agrees that this agreement shall not be construed as representing the mutual satisfaction of the parties concerning the treatment of their respective financial institutions; accordingly, the U.S. agrees, subject to Canada's commitment to consult and to liberalize further the rules governing its markets and to extend the benefits of such liberalization to U.S. controlled financial institutions established under the laws of Canada, to continue to provide, subject to normal regulatory and prudential considerations, Canadian controlled financial institutions established under the laws of the United States with the rights and privileges they now have in the U.S. market as a result of existing laws, regulations, practices and stated policies of the U.S. Government.

GOVERNMENT PROCUREMENT

The United States and Canada have agreed to eliminate buy national restrictions on procurements of covered goods by Code-covered entities below the threshold of the Government Procurement Code (the Code).

Under the text of the agreement, the procedures used for these purchases will build on the open and competitive principles and procedures of the Code. In addition, the text of the agreement improves upon Code procedures by establishing a common rule of origin, establishing an effective challenge system for all potential suppliers, and improving transparency, particularly for procurements which are single-tendered.

When the Agreement is implemented, the procurement obligations of the Code will be extended to cover procurements over an administrative threshold of US $25,000 in each country. These procurements will be open to suppliers of Canadian and/or U.S. products on a nondiscriminatory basis. The value of procurement opportunities to be opened by this agreement is estimated at approximately three billion U.S. dollars of U.S. procurement and about one-half billion (U.S.) dollars of Canadian procurements.

The Parties have agreed that, not later than one year after the renegotiation of the Code, the Parties shall undertake further negotiations to improve and expand the Chapter.

OCT 3, 1987

OCT 3, 1987

INVESTMENT

The Parties agree to provide each other's investors national treatment with respect to the establishment of new businesses, the acquisition of existing businesses, and the conduct, operation and sale of established businesses. More specifically, the Agreement binds the Parties not to adopt policies requiring minimum levels of equity holdings by their nationals in domestic firms controlled by investors of the other Party, or requiring forced divestiture. It also provides for fair standards for expropriation and compensation, as well as for free transfers of profits and other remittances subject only to a standard balance of payments clause.

The Agreement provides that the Parties will not impose export, local content, local sourcing, or import-substitution requirements on each others' investors, and will not place such requirements on third-country investors when any significant impact on U.S.-Canadian trade could result.

The Parties agree that all existing laws, regulations, and published policies and practices not in conformity with any of the obligations described above shall be grandfathered.

The Agreement defines the parameters under which Canada will continue to review U.S. investment in Canada. The Parties agree that the gross asset threshold for the review by Canada of a direct acquisition by a U.S. investor of a Canadian firm shall be as follows:

on the date of the implementation of the Agreement	Cdn$ 25 million
1st anniversary of such date	Cdn$ 50 million
2nd anniversary of such date	Cdn$ 100 million
3rd anniversary of such date	Cdn$ 150 million
4th anniversary of such date forward	Cdn$ 150 million in constant 3rd anniversary year dollars

The Parties further agree that the gross asset threshold for the review of an indirect acquisition by a U.S. investor of a Canadian firm shall be as follows:

on the date of implementation of the Agreement	Cdn$ 100 million
1st anniversary of such date	Cdn$ 250 million

2nd anniversary of such date	Cdn$ 500 million
3rd anniversary of such date forward	no review

Canada also agrees that the thresholds described above will apply to the acquisition by third country investors of Canadian firms controlled by U.S. investors.

The Parties agree that cultural industries are excluded from the investment chapter. However, Canada undertakes that in the event that it requires the divestiture to Canadians of a U.S.-controlled business in a cultural industry as part of the review of an indirect acquisition of such a business, Canada will offer to purchase the business at fair open market value, as determined by an independent, impartial assessment.

All commitments and practices flowing from this Chapter, other than decisions of Canada pursuant to its reviews of investment, will be subject to the Agreement's dispute settlement mechanism. Investors will have the right of access to U.S. and Canadian courts, and may ask their Governments to seek redress on their behalf through the dispute settlement mechanism.

A.S.
Oct 3/87

QUANTITATIVE RESTRICTIONS

Both Parties have agreed they will not maintain or introduce import or export restrictions except in accordance with the GATT, or as modified by the Agreement. Concerning imports, exceptions to this rule will only be allowed for traditional GATT Article XX reasons, such as health and safety. With respect to exports, short supply and conservation measures may be taken, but they must provide for the sharing of the resource with the other Party and they may not create price discrimination by other means. The agreement also contains a commitment to cooperate on the implementation of export controls (for short supply and conservation purposes only) to prevent diversion to third parties.

All existing quantitative restrictions will be eliminated, immediately or by an agreed timetable, or will be grandfathered under the Agreement. These actions include: a phase-out of the Canadian embargo on used automobiles between 1/1/89 and 1/1/93; elimination of the Canadian embargo on used aircraft upon entry into force of the Agreement; elimination of the U.S. embargo on lottery materials on 1/1/93; and retention of the U.S. and Canadian log export restraints and U.S. Jones Act provisions under General Exceptions to the Agreement.

30 Oct 87

SAFEGUARDS

The Parties have agreed to a two track system for future emergency measures to remedy serious injury caused by imports -- a bilateral track to deal with serious injury from imports resulting from the elimination and reduction of duties under the Agreement, and a global track to address serious injury under GATT Article XIX.

Under the bilateral track during the transition period, when imports from the other Party alone constitute a substantial cause of serious injury, the importing Party may suspend the reduction of any duty, increase the duty to the lower of the current MFN rate or pre-Agreement levels or to corresponding pre-Agreement seasonal rates. Actions are limited to a period of three years, may only be taken once for any particular good, and except by mutual consent, shall not have effect beyond the transition period. Mutually agreed compensation shall be provided to the exporting party, or that party may take action of equivalent effect.

Under the global track the Parties retain their Article XIX rights except that a Party shall exclude the other Party from the scope of an Article XIX action unless imports from that Party are substantial and are contributing importantly to the serious injury or threat thereof caused by imports. When a Party is excluded from an Article XIX action, that Party may subsequently be included in the action in the event of a surge in imports of such goods from that Party which undermines the effectiveness of the action. In the event of emergency measures against imports from the other Party, the action may not restrict the imports below the trend of imports over a reasonable recent base period with allowance for growth.

Agreed dispute settlement provisions will apply post facto on whether the conditions for taking safeguard action under the Agreement are met, whether the action taken is consistent with the provisions of the Agreement, and in relation to disputes on the adequacy of compensation, or whether any responsive action was excessive.

There is provision for notification and consultation before any action can be taken under either track and there is provision for mutually agreed compensation under both tracks.

For purposes of this Chapter:

Substantial: means imports from the other party in the range of 5 to 10 percent or less of total imports would normally not be considered substantial.

Contribute importantly: means an important cause but not the most important cause of injury from imports.

Surge: means a significant increase in imports over the trend for a reasonable recent base period for which data are available.

30 Oct 87

SERVICES

The Parties have agreed to complete a final text that lays out a set of disciplines covering a large number of services sectors. Principles of such a text would include national treatment, right of establishment, right of commercial presence, transparency and dispute settlement, all of which will apply to future laws and regulations governing trade and investment in covered sectors.

Both Parties have agreed to include in the services understanding a provision for addressing future rollbacks in various sectoral areas on a mutually agreed basis.

The Parties will include sectoral annexes clarifying the application of the disciplines to architecture, tourism, and enhanced telecommunications and computer services. Subject to appropriate legal review by both parties, a similar annex would be included that clarifies the application of the agreement to future laws and regulations in the transportation sectors.

Both Parties have established specific understandings regarding the temporary entry of business persons and recognized professions and persons engaged in sales or after-sales service functions.

The Parties have agreed to an annex that would ensure the further development of an open and competitive enhanced telecommunications and computer services market by incorporating the following principles:

A) Nondiscriminatory access to, and use of, the basic telecommunications transport services, including: the lease of local and long distance telephone services; full period flat rate private line service; dedicated inter-city voice channels; and public data services for the movement of information including intracorporate communications; the sharing and reselling of basic telecommunications services; and the purchase or lease of terminal equipment;

B) Maintenance of existing access for the provision of enhanced telecommunications services through the use of the telecommunications transport network and computer services within and across borders of both Parties;

C) Assurance that enhanced service providers do not benefit from unreasonable cross subsidization or other anticompetitive practices from their related monopoly service providers. Appropriate safeguards, such as separate accounting records, sufficient structural separations and disclosure shall be put in place.

The understandings will govern computer services whether or not conveyed over the telecommunications transport network.

Enhanced telecommunications services are services which are more than basic telecommunications services as defined and classified by

measures of the regulators of the Parties. Greater precision, including agreed upon benchmarks, will be included in the definition.

The Parties have agreed to an understanding that recognizes the importance of developing mutually acceptable professional standards and the mutual recognition by the respective licensing authorities of professional architects. This understanding builds on the efforts of the Royal Architectural Institute of Canada and the American Institute of Architects, who are in the process of recommending mutually acceptable standards regarding education, examination, experience, code of ethics, and professional development. We have agreed that upon completion of the Associations' work, we will review the recommendations and encourage adoption of necessary legal changes by the states and provinces leading to mutual recognition by no later than 1990.

STANDARDS

The Parties have agreed on a text which would enhance our mutual rights and obligations under the GATT and the Standards Code.

At the federal level, neither Party will use standards as a barrier to trade. Standards and regulations are allowed where their demonstrable purpose is to protect health and safety, environmental, national security and consumer interests. However, these measures must not operate to exclude goods of the other Party that meet these objectives.

The Parties also agree to harmonize federal standards-related measures to the greatest extent possible, and to promote harmonization of private standards.

We will set up a process at the federal level for mutual recognition of systems for accrediting testing labs, and to provide for accreditation of testing facilities and of certification bodies.

We provide for enhanced transparency in regulatory process with additional information exchange and a guaranteed 60-day comment period on proposed regulations. Similar provisions will apply for state, provincial and private standards activities, but only at a "best efforts" level.

Spj 10-3-87

30 Oct. 1987

Elements of the Agreement

Tariffs

The United States and Canada agree that all bilateral tariffs on goods meeting the rules of origin will be eliminated. All dutiable products are assigned by mutual agreement to one of the following staging categories for duty elimination: a) immediate duty elimination; b) duty elimination in 5 equal annual stages; or c) duty elimination in 10 equal annual stages.

The United States and Canada agree that the initial stage of reduction shall become effective January 1, 1989, for all products, except that for specialty steel items the initial stage of reduction shall become effective October 1, 1989, upon termination of the U.S. Section 201 action on such products.

Both Parties agree that goods meeting the rules of origin and for which the existing tariff rate, as defined in the agreement, is free shall remain free, with a limited number of agreed exceptions.

The United States agrees that the U.S. duty-free treatment of western red cedar shingles will be restored upon the termination of the current U.S. Section 201 action on that product.

The United States and Canada agree that reductions in rates of duty shall be rounded down to the next lower 0.1 percent, or 0.1 cent as the case may be for virtually all products.

The United States and Canada agree that the staged elimination of the duty established in the Agreement for any product may be accelerated upon mutual agreement by Canada and the United States on such acceleration for the particular product.

Canada and the United States agree upon a procedure and general guidelines to be followed for translating the schedules of tariff concessions from the Harmonized System nomenclature in which they are expressed to the nomenclature of their respective existing tariff schedules if that should become necessary.

Canada and the United States agree upon the tariff regime which will be applicable to products included in the Canadian Machinery Program.

FAR
10/3/87

KF
Oct 3 '87

TEMPORARY ENTRY FOR BUSINESS PURPOSES

The Parties have agreed to a Chapter outlining reciprocal undertakings regarding temporary entry for our citizens into each other's country for business purposes. These undertakings reflect the special trading relationship between the Parties and the desirability of establishing transparent criteria and clear procedures for facilitating temporary entry, while ensuring border security and protecting indigenous labor and permanent employment.

The Parties have agreed not to diminish the extent to which immigration measures in existence at the time of entry into force of the Agreement provide for temporary entry of business persons for purposes specified in the Agreement.

The Parties have agreed to a list of business visitors who are eligible to enter temporarily under the U.S. Nonimmigrant Class B-1 and the Canadian Regulation 19(1) without need of prior approval procedures, petitions or labor certification tests.

The Parties have agreed to a list of professional business persons who are eligible under a new U.S. section 214(e) of the INA and the Canadian Regulation 20(5) without need of prior approval procedures, petitions or labor certification tests.

The Parties have agreed to provide a supplemental visa or equivalent prior application procedure to give added certainty for temporary entry of certain traders and investors through use of the U.S. E visa and the Canadian Regulation 20(5).

The Parties agreed not to require labor certification tests or similar procedures for temporary entry of intra-company transferees under U.S. Nonimmigrant Class L-1 and the Canadian Regulation 20(5).

The Parties agreed to the establishment of a new consultative mechanism to address implementation of the undertakings of this Chapter, and to allow for further facilitation of temporary entry.

CGH
10/3/87

October 3, 1987.

WINE AND DISTILLED SPIRITS

Coverage

This chapter of the Agreement will apply to the internal sale and distribution of wine and wine-containing beverages, and distilled spirits and distilled spirits-containing beverages. It will not apply to beer or malt-containing beverages.

Listing Practices

The Parties will grant immediate national treatment for listings on products covered by this chapter. Listing measures will be non-discriminatory, transparent, based on normal commercial considerations, and will not create disguised barriers to trade. All listing criteria shall be published and generally available to the public. There shall be an administrative appeal process for listing decisions. Automatic listing practices for the British Columbia estate wineries existing on October 4, 1987, meeting the current local content rule and producing less than 30,000 gallons annually are grandfathered.

Pricing Practices

Where the distributor is a public entity, the entity may charge producers the actual cost of service differential for product imported from the other Party. The differential which may be charged for imported product may only reflect the audited difference between the cost of service for the imported product which exceeds the cost of service for domestic product.

For wine, 25% of the differential in markup between the product of Canada and the United States will be eliminated at the beginning of the first year, 25% at the beginning of the second year, and the remaining will be phased out in equal steps over the following five years. Cost of service differentials will be permitted as defined above.

All discriminatory markups on distilled spirits will be eliminated immediately. Cost of service differentials will be permitted as defined above.

All other discriminatory pricing measures will be eliminated immediately

Distribution Practices

The Parties will immediately provide national treatment for distribution systems and practices for products covered by this chapter with the following exceptions:

(1) on premise sale of goods covered by this chapter produced on the premises of the distillery or the winery will be permitted.

(2) private wine store outlets existing on October 4, 1987 in Ontario and British Columbia will be grandfathered.

Province of Quebec requirements for in-province bottling of product sold in grocery stores are recognized as being consistent with national treatment.

Blending Requirements

The blending requirement relating to the importation in bulk of distilled spirits for purposes of bottling in Canada will be eliminated.

Consultation

The Parties shall, upon request, consult regarding measures pertaining to this chapter.

Distinctive Products

Bourbon Whiskey will be recognized as a distinctive product of the United States, and Canadian Whiskey will be recognized as a distinctive product of Canada.

OTHER MEASURES

The Parties have agreed to cooperate in the Uruguay Round of multilateral trade negotiations and in other international fora to improve protection of intellectual property.

Canada has agreed to revise its copyright law to provide protection to the retransmission of copyright programming effective no later than the entry into force of this Agreement.

Canada has agreed to remove the "print in Canada" requirement for eligible advertising expenses which can be deducted for income tax purposes.

Canada has agreed to phase out discriminatory postal rates for magazines of significant circulation.

The Parties have agreed that on or about March 15, 1988, the Canada Mortgage and Housing Corporation (CHMC) shall issue its evaluation of American Plywood Association (APA) trademarked C-D grade plywood with exterior glue as described in U.S. Product Standard PS-1 for Construction and Industrial Plywood for use in housing financed by CMHC.

The Parties have further agreed that if the CMHC does not grant approval for the use of C-D grade plywood in CHMC financed housing, or grants approval only in part, the CMHC evaluation shall be reviewed by an impartial panel of experts mutually agreed by the Parties.

If the panel of experts does not agree with the CMHC findings or evaluation, or it has not completed its review by the date of entry into force of this Agreement, the United States shall be free to delay its tariff concessions on softwood plywood (4412.19.40 and 4412.99.40) and waferboard, oriented strand board and particle-board of all species (4410.10.00) pending agreement by the Parties that the issues have been resolved satisfactorily. Should the U.S. proceed to delay implementation of these tariff concessions Canada shall be free to delay its implementation of its tariff concessions on 4412.19.90, 4410.10.10, and 4410.10.91.

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4 Oct 87

OTHER PROVISIONS

The Parties have agreed that the Free Trade Agreement does not impair or prejudice the exercise of any rights or enforcement measures arising out of the 1986 Softwood Lumber Memorandum of Understanding.

Binational Panel Dispute Settlement in Antidumping and Countervailing Duty Cases

Elements of the Agreement

In principle, the two Parties have agreed on the following provisions to address trade remedies and dispute settlement:

A. Domestic Antidumping and Countervailing duty Laws

- The investigating authorities of each Party shall continue to enforce domestic antidumping and countervailing duty laws within their jurisdiction.

- The free trade agreement shall provide that each Party reserves fully its right to change its domestic antidumping and countervailing duty laws, provided that:

  - no future changes in such laws can be applied to the other Party unless it is so specified in the legislation;

  - it notified such proposed changes to the other Party and entered into prior consultations with the other Party upon request;

  - it makes only changes applicable to the other Party which are consistent with the GATT Antidumping Code and Subsidies Code, and with the object and purpose of the free trade agreement including the object and purpose of these dispute settlement provisions. The object and purpose is to establish fair and predictable conditions for the progressive liberalization of trade between the two countries while maintaining effective disciplines on unfair trade practices, such object and purpose to be ascertained from the provisions of the free trade agreement, its preamble and objectives and the practices of the Parties.

B. Remedial Process

- A panel may issue declaratory opinions with respect to changes by a Party to its anti-dumping or countervailing duty statutes after entry into force of the FTA with respect of:

  i) their consistency with the GATT Antidumping Code and Subsidies Code, and with the objects and purpose of the free trade agreement including the objects and purpose of the dispute settlement provisions; and

  ii) whether it has the effect of overturning a prior decision of a binational dispute settlement panel.

In the event the panel recommends modifications to the changes in the anti-dumping or countervailing duty statutes, this action will:

(a) trigger compulsory consultation for 90 days;

(b) during which period the parties will seek a mutually agreable solution which may include seeking remedial legislation, and

(c) in the event such legislation is not introduced and enacted into law within 9 months, and no other agreement is reached the other party may:

  (i) take comparable legislative or equivalent executive action, or

  (ii) terminate the agreement with 60-days notice.

C. Binational Panel Process

- A new binational panel would replace judicial review in both the U.S. and Canada.

- At either party's request, this panel would review, based upon the administrative record, final AD/CVD orders to determine if an investigating authority of either party made a decision not in accordance with its laws (including statutes, legislative history, regulations, administrative practice and judicial precedent). In such review, the binational panel would apply the appropriate

standard of judicial review applicable under the domestic law of the party whose final AD/CVD order was challenged.

- The panel would be a temporary, ad hoc body selected from a roster of possible panelists as specified in detail in the attachment at tab one.

- The Parties would agree on procedures for resort to and decisions of such a panel, as specified in detail in the attachment at tab two.

- The decision of a panel shall be binding on the Parties and their investigating authorities. The panel may uphold or remand the decision to the relevant investigating authority for action not inconsistent with such decision.

D. Application of this Arrangement

- This arrangement shall be in effect for five years pending the development of a substitute system of laws in both countries for antidumping and countervailing duties. If no such system of laws is agreed and implemented at the end of five years, the present arrangement is extended for a further two years. Failure to agree to implement a new regime at the end of the two-year extension, shall allow either Party to terminate the agreement on six-month notice.

- Both Parties agree to establish a Working Group to develop a substitute regime and report back as soon as possible. The Parties shall use their best efforts to develop and implement the substitute regime within the agreed time limit.

- This arrangement would apply only prospectively, after entry into force of the free-trade agreement, to:

  - antidumping and countervailing duty investigations in which a final determination of injury to the domestic industry is made by the relevant investigating authority after January 1, 1989; and

  - Administrative reviews of antidumping and countervailing duty orders or suspension agreements in which a final decision regarding the results of such review is made by the relevant investigating authority after January 1, 1989.

10/3/87

Tab 1

BINATIONAL PANELS

A panel for this purpose would consist of five members, two appointed by each party from an agreed roster of panelists in consultation with the other party. The fifth panelist would be selected by agreement of both parties; in the event that the parties were unable to agree within ___ days, the fifth panelist would be selected by agreement among the other four panelists. If a fifth panelist still has not been selected by this procedure, the fifth panelist shall be chosen by lot from the roster.

In the selection of panelists, each party would be permitted to exercise _____preemptory strikes, disqualifying from appointment to the panel up to __ candidates proposed by the other party.

Prior to the entry into force of the FTA, the parties would agree on a roster of __ possible panelists composed equally of candidates suggested by one party and candidates suggested by the other party. The parties would consult concerning their respective candidates for the roster. The parties would normally form panels drawn from the roster, but would not be compelled to do so exclusively.

10/3/97

Tab 2

PANEL PROCEDURES

- When the investigating authorities of one government have made preliminary determinations regarding both injury and sales at less than fair value or subsidies, the other government may provide notice of its intention to resort to a panel ruling to the first government. At that time, the two governments would name panelists and make necessary arrangements with those panelists.

- The procedures for resort to a panel at the conclusion of an AD or CVD case (i.e., at the time an order is issued) would be as follows:

  -- 30 days for the complaining party to file its complaint.

  -- 30 days for designation of the administrative record and its filing with the panel.

  -- 60 days for complainant to file its brief.,

  -- 60 days for respondent to file its brief.

  -- 15 days for each party to file reply briefs.

  -- 15-30 days for the panel to convene to hear oral argument by each party.

  -- 90 days for the panel to issue its decision.

  -- the investigating authority concerned would take action not consistent with the decision of the panel, within time limits set by the panel taking into account the complexity and difficulty of such action (e.g., whether the investigating authority needs to obtain new factual information to take such action).

Article : Extent of Obligations

The Parties to this Agreement shall ensure that all necessary measures are taken in order to give effect to its provisions, including their observance, except as specifically provided elsewhere in this Agreement, by state, provincial and local governments.

NATIONAL SECURITY

Nothing in this Agreement shall be construed

(a) to require any Party to furnish any information the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests;

  (i) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of suppling a military establishment;

  (ii) taken in time of war or other emergency in international relations; or

(c) to prevent any Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

4/10/87

Institutional Provisions

Application

1. Except as provided in the Annex, the provisions of this Part shall apply to avoidance or settlement of all disputes respecting the interpretation or application of this Agreement, unless the Parties agree jointly to use another procedure in any particular case.

2. Disputes arising under both this Agreement and the GATT may be settled in either forum, according to the rules of that forum, at the request of the complaining Party.

3. Once the dispute settlement provisions of this agreement or any other applicable international dispute settlement mechanism has been invoked pursuant to paragraph 2 with respect to any matter, the procedure invoked shall be used to the exclusion of any other.

The Commission

1. The Parties hereby establish the Canada-United States Trade Commission (the Commission) to supervise the proper implementation of the Agreement, to resolve disputes that may arise over the interpretation and application of the Agreement, to oversee the further elaboration of the Agreement, and to consider any other matter that may affect the operation of the Agreement.

2. The Commission shall be composed of representatives of both Parties. The principal representative of each Party shall be the cabinet-level officer or Minister primarily responsible for international trade matters, or the respective designee of that official.

3. Each Party shall preside in alternate years over the Commission, which shall convene at least once a year in regular session to review the general functioning of the Agreement. Regular sessions of the Commission shall be held alternately in the two countries.

4. The Commission may establish and delegate responsibilities to such subsidiary ad hoc or standing committees or working groups as it deems necessary and appropriate. The Commission may also draw on

the advice of the non-governmental individuals or groups where appropriate.

5. All decisions of the Commission shall be taken by consensus.

6. The Commission shall establish its own rules and procedures.

Notification

1. Each Party shall provide written notice to the other Party of any proposed or actual legislation, regulation or governmental procedure or practice that it considers might materially affect the operation of this Agreement. The notice shall include, whenever appropriate, a description of the reasons for the proposed or actual measure.

2. The written notice shall be given as far in advance as possible of the implementation of the measure. If prior notice is not possible, the Party implementing the measure shall provide written notice to the other Party as soon as possible after implementation.

3. Upon request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed legislation, regulation, or governmental procedure or practice, whether or not previously notified.

4. The provision of written notice is without prejudice to whether the measure referred to therein is consistent with the Agreement.

Consultation

1. Either Party may request consultations regarding any actual or proposed measure or any other matter which it considers affects the operation of this Agreement, whether or not the measure or matter has been notified in accordance with the notification Article.

2. The Parties shall make every attempt to arrive at a mutually satisfactory resolution through consultations under this Article or other consultative provisions in this Agreement.

3. If the Parties fail to resolve a dispute through consultations within 30 days of the request for consultations under paragraph 1,

either Party may request in writing a meeting of the Commission. The request shall state the measure or other matter complained of, and shall indicate what provisions of the Agreement are considered relevant. Unless otherwise agreed, the Commission shall convene within ten days and shall endeavor to resolve the dispute promptly.

4. The Commission may call on such technical advisors as it deems necessary, or on the assistance of a mediator acceptable to both Parties, in an effort to reach a mutually satisfactory resolution of the matter.

6. Where the Parties agree on a mutually satisfactory resolution as a result of the procedures provided for in this Article, they shall take any appropriate measure necessary to implement the agreed resolution of the matter.

6. The Commission shall refer all disputes under the safeguard chapter and the Commission may refer any dispute under any other chapter to binding arbitration on such terms and in accordance with such procedures as the Commission may adopt. If a Party or its subdivisions fails to implement in a timely fashion the findings of a binding arbitration panel regarding its measure or measures and the Parties are unable to agree on appropriate compensation, then the other Party shall have the right to suspend the application of equivalent benefits of the Agreement to the non-complying Party.

Dispute Settlement

1. a) Except as provided in the Annex to this Part, the provisions of this Article shall apply whenever a dispute arises concerning the interpretation or application of this Agreement, or whenever a Party considers that an actual or proposed measure of the other Party or its political subdivisions is or would be inconsistent with the obligations of the Agreement.

b) If a dispute has been referred to the Commission under Article V and has not been resolved within a period of 30 days after such referral, or within such other period as the Commission has agreed upon, the Commission, upon request of either Party, shall establish a panel of experts to consider the matter.

2. a)The panel shall be composed of 5 members, at least two of whom shall be citizens of Canada and at least two citizens of the United States. Within fifteen days of establishment of the panel, each Party, in consultation with the other Party, shall choose two members of the panel and the Commission shall endeavor to agree on the fifth. If the Commission is unable to agree on the fifth panelist within such period, then, at the request of either Party, the four appointed panelists shall decide on the fifth panelist within 30 days of establishment of the panel. If no agreement is possible, the fifth panelist will be selected by lot from the roster.

b)The Commission shall develop and maintain a roster of individuals who are willing and able to serve as panelists in individual disputes. Wherever possible, and consistent with the nature of the dispute, panelists shall be chosen from this roster. In all cases, panelists shall be chosen strictly on the basis of objectivity, reliability, sound judgment, and, where appropriate, expertise in the particular areas or areas under consideration. Panelists shall not be affiliated with, or take instructions from either Party.

c)The panel shall establish its own rules of procedure, unless the Commission has agreed otherwise. The procedures shall assure a right to at least one hearing before the panel, as well as the opportunity to provide written submissions and rebuttal arguments. The proceedings of the panel shall be confidential. Unless otherwise agreed by the Parties, the Panel shall base its decision on the arguments and submissions of the Parties.

3. Unless the Parties otherwise agree, the panel shall, within three months after its chairman is appointed, present to the Parties an initial report containing findings of fact, and its determination as to whether the measure or measures at issue are or would be inconsistent with the obligations of the Agreement and its recommendations, if any, for resolution of the dispute. If requested by either Party at the time of establishment of the panel, the panel shall also present findings as to the degree of adverse trade effect on the other party of any measure or measures found not in conformity with the obligations of the

Agreement. Panelists shall be at liberty to furnish separate opinions on matters not unanimously agreed among the panel.

4. Within 14 days of issuance of the initial report of the panel, a Party disagreeing in whole or in part with the report of the panel shall present a written statement of its objections and the rationale for those objections to the Commission and the panel. In such an event, the panel on its own motion or at the request of the Commission or either Party may request the views of both Parties and reconsider its report, make any further examination that it deems appropriate and issue a final report, along with dissenting or concurring opinions, within 30 days of issuance of the initial report.

5. Unless the Commission agrees otherwise, the final report of the panel shall be published along with any separate opinions by panel members, and any written views that either Party desires to be published.

6. Upon receipt of the final report of the panel, the Commission shall agree on a resolution of the dispute, which normally shall conform with the findings of the panel. Whenever possible, the solution shall be non-implementation or removal of a measure not conforming with the Agreement or, failing such a solution, compensation to the affected Party.

7. If the Commission has not reached agreement on a mutually satisfactory resolution within one month of receiving the final report of the panel (or such other date as the Commission may decide), and a Party considers that its fundamental rights under the Agreement are or would be impaired by the implementation or maintenance of the measure or measures of the other Party, the first Party shall be free to suspend the application to the other Party of benefits of equivalent effect until such time as the Parties have reached agreement on a resolution of the dispute.

Referrals of Matters From Judicial
or Administrative Proceedings

1. In the event an issue of interpretation of the Agreement arises in any domestic judicial or administrative proceeding of a Party which

either Party considers would merit intervention by a Party, or if a court or administrative body solicits the views of either or both Parties, the Parties shall endeavor to arrive at an agreed position on the proper interpretation of the applicable provisions, if any, of the Agreement.

2. The Party in whose territory the court or administrative body is located shall submit any agreed interpretation to the court or administrative body in accordance with the rules of that forum. If the Parties are unable to reach agreement on the proper interpretation of the provision of the Agreement at issue, either Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

Annex

Application

AD/CVD

Financial Services

STANDSTILL

Both Parties recognize that this agreement is subject to domestic approval on both sides. Accordingly both Parties understand the need to exercise their discretion in the period prior to entry into force so as not to jeopardize the approval process or undermine the spirit and mutual benefits of the Free Trade Agreement.